



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaints by William Dwyer and Mary-Woo Sims dated January 9, 1990 and June 20, 1991 respectively, alleging discrimination in employment on the basis of sexual orientation.

B E T W E E N :

Ontario Human Rights Commission

- and -

William Dwyer

Complainant

- and -

Municipality of Metropolitan Toronto and Dale Richmond

Respondent

AND BETWEEN :

Ontario Human Rights Commission

- and -

Mary-Woo Sims

Complainant

-and-

Her Majesty the Queen in Right of Ontario,
as represented by the Ministry of the Attorney General

Respondent

INTERIM DECISION

Adjudicator : Susan Tacon
Date : January 30, 1996
Board File No: BI-0056-93
Decision No : 96-004-I



APPEARANCES

Ontario Human Rights Commission)))	Fiona Sampson, Counsel
William Dwyer)))	Meredith Cartwright, Counsel
Mary-Woo Sims)))	Susan Ursel, Counsel
Municipality of Metropolitan Toronto and Dale Richmond)))	George Monteith, Counsel
Her Majesty the Queen in Right of Ontario, as represented by the Ministry of the Attorney General)))	Peter Landmann, Counsel
C.U.P.E., Local 79)))	Denis Ellickson
O.M.E.R.S.)))	Irene Wolfe

IN THE MATTER OF a Board of Inquiry
appointed pursuant to s. 38(1) of the
Human Rights Code, R.S.O. 1990, c. H.19, as amended,
BETWEEN:

WILLIAM DWYER

Complainant

- and -

MUNICIPALITY OF METROPOLITAN TORONTO AND DALE RICHMOND

Respondents

AND BETWEEN:

MARY-WOO SIMS

Complainant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTRY OF THE ATTORNEY GENERAL

Respondent

Dates of the Complaints:

January 9, 1990 and June 20, 1991, respectively

Date of Interim Decision: January 30, 1996

Board of Inquiry: Susan Tacon

Appearances:

Fiona Sampson on behalf of the Commission

Meredith Cartwright on behalf of the Complainant Dwyer

Susan Ursel on behalf of the Complainant Sims

Denis Ellickson on behalf of C.U.P.E., Local 79

Irene Wolfe on behalf of O.M.E.R.S.

George Monteith on behalf of the Respondents the Municipality
of Metropolitan Toronto and Dale Richmond

Peter Landmann on behalf of the Respondent Her Majesty the Queen
in Right of Ontario, as represented by the Ministry of the
Attorney General

INTERIM DECISION

At the conclusion of the evidence in these complaints, an issue arose as to the admissibility of documents which counsel for the complainant Sims and counsel for the Commission wished to have entered as exhibits. It was agreed that any objection to the admissibility of the documents and all submissions in that regard were to be in writing by specified dates.

The document book filed by counsel for the Commission includes:

- (1) excerpts from Life Together: A Report on Human Rights in Ontario, Ontario Human Rights Commission, 1977;
- (2) Legislature of Ontario Debates, 1986 (excerpts);
- (3) excerpts from Report on Pensions as Family Property: Valuation and Division, Ontario Law Reform Commission, 1995;
- (4) Legislature of Ontario Debates, 1994 (excerpts);
- (5) Bill 167;
- (6) Pension Plans in Canada, 1992, Statistics Canada, 1994.

The document book filed by counsel for the complainant Sims includes:

- (1) Discrimination Against Lesbians and Gay Men: The Ontario Human Rights Omission - A Brief to the Members of the Ontario Legislature, Toronto: The Coalition for Gay Rights in Ontario 1986;
- (2) We Count - Lesbians, Gay Men and Employment Equity: A Brief Written for the Ontario Legislature by Members of the Coalition for Lesbian and Gay Rights in Ontario, Toronto: The Coalition for Lesbian and Gay Rights in Ontario, 1991;
- (3) Happy Families: A Brief on the Recognition of Same-Sex Spousal Relationships written for the Ontario Legislature by the Coalition for Lesbian and Gay Rights in Ontario, Toronto: The Coalition for Gay and Lesbian Rights in Ontario, 1992;
- (4) Report on the Rights and Responsibilities of Cohabitants under the Family Law Act, Toronto: The Ontario Law Reform Commission, 1993 (including Executive Summary and Press Release);

(5) Gay, Lesbian and Unmarried Heterosexual Couples and the Family Law Reform Act: Accommodating a Diversity of Family Forms: A Research Paper prepared for the Ontario Law Reform Commission by Professors Brenda Cossman and Bruce Ryder, Osgoode Hall Law School, Toronto: June 1993;

(6) excerpts from the Canadian Human Rights Commission Annual Report for the years 1990, 1991, 1992, 1993 and 1994;

(7) From Illegality to Equality: Report on the Public Consultation on Violence and Discrimination against Gays and Lesbians, Exerpts, Quebec: Commission des droits de la personne du Quebec, 1994;

(8) Fact Sheet: Prohibiting Discrimination Based on Sexual Orientation, Winnipeg: The Manitoba Human Rights Commission, 1995 in Human Rights and the Workplace: A Practical Guide by Lori McDowell (Toronto: Carswell, 1995)

(9) Manitoba Human Rights Commission "Sample Declaration Cohabiting Relationship" from "Employee Benefit Plans Guidelines" Winnipeg: The Manitoba Human Rights Commission, 1995 in Human Rights and the Workplace: A Practical Guide by Lori McDowell (Toronto: Carswell, 1995).

Counsel for the Attorney General of Ontario did not object to the book of documents filed by the Commission as that material was regarded as admissible pursuant to section 25 of the Evidence Act. Nor, for the same reason, was there an objection to documents 4, 6, 7, 8 and 9 in the book of documents filed by counsel for the complainant Sims. Counsel did object to documents 1, 2, 3 and 5 of the Sims material being admitted into evidence for the proof of their contents or in respect of any other fact in dispute. It was argued that:

"These documents are not government documents and there is no special rule of evidence which makes them admissible. It is submitted that it would be dangerous to allow these materials into evidence as they contain allegations by an interest group and academics which are untested by cross-examination in this hearing."

Counsel for the complainant Sims submitted that the impugned documents should be admitted into evidence. Documents 1, 2 and 3 are submissions to the Ontario Legislature with respect to specific Bills and, it was argued, became part of the public record of the

deliberations of the Legislature. The documents are tendered for the purpose of refuting the assertion of counsel for the Attorney General regarding the alleged "novelty" of the issue of recognition of same-sex spouses. Document 5, counsel asserted, was the underlying report which was the basis of the report and executive summary noted as document 4 and to which there was no objection regarding admissibility. Counsel disputed the contention that the documents would be "dangerous" to admit unless tested by cross-examination. Counsel contended that the documents in question were akin to those already admitted into evidence at the request of counsel for the Attorney General. Consequently, it would be unfair to refuse to admit the documents in question.

In reply, counsel for the Attorney General indicated that he had no reply submissions with regard to the admissibility of the non-government documents filed by the complainant Sims. Counsel reiterated his position that there would be no objection to those documents being filed with the authorities relied upon by counsel for the complainant Sims should the documents themselves be ruled not admissible as evidence.

The only documents in respect of which objection to their admissibility has been taken are 1, 2, 3 and 5 of the book of documents tendered by counsel for the complainant Sims. Having carefully considered the nature of the documents, the submissions of counsel and the purpose for which the documents have been tendered, I am of the view that the documents should be admitted.

There is no question as to the authenticity of the documents, i.e., the materials are what they purport to be as described by counsel for the complainant Sims. Documents 1, 2 and 3, in my view, are matters of public record in that they are submissions to the Ontario Legislature in connection with deliberations on various Bills. Document 5 is the underlying report which was the basis of the report and executive summary in document 4 to which there was

no objection. However, I need not ultimately determine whether the documents properly fall within section 25 of the Evidence Act and are admissible on that basis given my conclusion that the documents should be admitted as a matter of my discretion in any event. The documents are akin to those already admitted. Further, I do not consider the documents manifest the concerns raised by counsel for the Attorney General.

In the circumstances, I have determined that the documents should be admitted into evidence. My ruling decides only the issue of admissibility. The parties are free to make submissions with respect to the proper weight which should be accorded the documents in the context of the issues raised in the instant complaints.

DATED this January 30, 1996.

A handwritten signature in dark ink, appearing to be 'S. Tacon', is written over a horizontal line.

Susan Tacon
Chair, Board of Inquiry

